



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

August 12, 1991

Ms. Myra S. Chickering
Attorney for MHMRA of Harris County
3300 First City Tower
1001 Fannin
Houston, Texas 77002-6760

OR91-368

Dear Ms. Chickering:

On behalf of the Mental Health Mental Retardation Authority of Harris County (hereafter MHMRA), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12853.

MHMRA received a request for the "dollar bids for hardware and software" submitted by all prospective bidders and "any comparison reports that separate [the] finalists from the other general bidders." You assert that complying with this request would require the release of confidential technical information submitted to MHMRA as a part of the bidding process. Consequently, you contend that the bid documents come under the protection of sections 3(a)(4) and 3(a)(10) of the Open Records Act. Additionally, you claim that the comparison reports are excepted under section 3(a)(11).

First, we will address your claim under section 3(a)(11) of the Open Records Act, which excepts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." This office has held that section 3(a)(11) protects only advice, opinion, and recommendation. Open Records Decision Nos. 574 (1990); 470 (1987). Moreover, the ultimate test as to whether advice, opinion, or recommendation is excepted by section 3(a)(11) is whether it actually plays a role in the decisional process. Open Records Decision Nos. 565 (1990); 525 (1989). A comparison report is clearly a non-factual recommendation that has been a part of the decisional process. Therefore, you may withhold those documents under section 3(a)(11).

With respect to the bid documents, you claim exception under 3(a)(4), which is designed to protect government interests in commercial transactions. *See* Open Records Decision No. 541 (1990). This office has recognized that so long as negotiations are in progress regarding the interpretation of bid provisions, and so long as any bidder remains at liberty to furnish additional information relating to the proposed contract, bidding should be deemed confidential. Open Records Decision No. 170 (1977) (copy enclosed). In addition, it has been held that information relevant to the submitted bids may be withheld under section 3(a)(4). *Id.* Accordingly, you may also withhold the bid documents. Because you may withhold the bids under section 3(a)(4), we need not address the applicability of section 3(a)(10) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-368.

Yours very truly,



John Steiner

Assistant Attorney General
Opinion Committee

JS/RNG/lb

Ref: ID# 12853

Enclosure: documents; Open Records Decision No 170.

cc: Dianne Savage
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